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6 IN THE UNITED STATES DISTRICT COURT  
7 FOR THE DISTRICT OF ARIZONA  
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9 Edward Faye Parks,

10 Petitioner,

11 vs.

12 Charles L. Ryan, et al.,

13 Respondents.

No. CV-13-08108-PCT-DLR

**ORDER**

14  
15 Following a jury trial in Mohave County Superior Court in 2012, Petitioner  
16 Edward Faye Parks was found guilty of two counts of aggravated assault and one count  
17 of disorderly conduct with a weapon. The trial court sentenced Mr. Parks to concurrent  
18 sentences, the longest of which is 15.75 years.

19 Mr. Parks filed a petition for writ of habeas challenging his convictions on  
20 multiple grounds. (*See* Doc. 8 at 6–8.) The Court referred the petition to United States  
21 Magistrate Judge David K. Duncan for report and recommendation ("R&R"). (*See* Doc.  
22 2.) Judge Duncan recommended that the Court dismiss the petition without prejudice  
23 because Mr. Parks has not exhausted state remedies. (Doc. 20 at 2.)

24 Mr. Parks filed objections to the R&R. (Doc. 22.) For the reasons that follow, the  
25 Court will accept the R&R's conclusions and dismiss the petition without prejudice.

26 **I. Standard of Review.**

27 A party may file specific written objections to the R&R's proposed findings and  
28 recommendations. The Court must undertake de novo review of those portions of the

1 R&R to which specific objections are made. The Court may accept, reject, or modify, in  
2 whole or in part, the findings or recommendations made by the Magistrate Judge.  
3 Fed. R. Civ. P. 72(b); 28 U.S.C. § 636(b)(1).

4 **II. Analysis.**

5 Mr. Parks objects to the finding in the R&R that he has not exhausted state  
6 remedies. (Doc. 22 at 2.) Mr. Parks claims that *he* has not failed to exhaust state  
7 remedies and states that “it’s the fault of appointed counsel.” (*Id.*) In other words, Mr.  
8 Parks does not dispute that a petition for post-conviction relief is pending in state court,  
9 but appears to take issue with the pace at which that case is proceeding. (*Id.*; *see also*  
10 Docs. 24, 25.) Because Mr. Parks’ initial post-conviction proceedings are still pending in  
11 Mohave County Superior Court, the Court agrees with Judge Duncan’s finding that Mr.  
12 Parks’ habeas petition is premature. Accordingly,

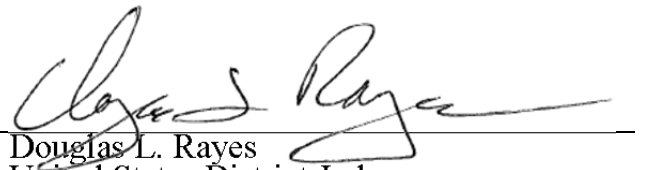
13 **IT IS ORDERED** that Judge Duncan’s R&R (Doc. 20) is **ACCEPTED**.

14 **IT IS FURTHER ORDERED** that Edward Faye Parks’ Amended Petition is  
15 dismissed without prejudice.

16 **IT IS FURTHER ORDERED** that a certificate of appealability and leave to  
17 proceed *in forma pauperis* are **DENIED** because dismissal of the Petition is justified by a  
18 plain procedural bar and jurists of reason would not find the ruling debatable.

19 Dated this 23rd day of September, 2014.

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Douglas L. Rayes  
United States District Judge